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HIGH COURT OF CHHATTISGARH AT BILASPU..

CR.M.P.NO. 583 OF 2007

CR.M.P.NO. 584 OF 2007

AND

CR.M.P.NO. 585 OF 2007

PETITIONER/APPLICANT		Abdul Gani
	VERSUS	
RESPONDENT/ NON-APPLICANT		State of Chhattisgarh

O R D E R

PASSED ON 17th DECEMBER 2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P.NO. 583 OF 2007

CR.M.P.NO. 584 OF 2007

AND

CR.M.P.NO. 585 OF 2007

PETITIONER/APPLICANT		Abdul Gani, Aged about 32 years, S/o – Adam Bhai, R/o – Rajendra Nagar, Bilaspur, Tehsil & District-Bilaspur, Chhattisgarh.
	VERSUS	
RESPONDENT/ NON-APPLICANT		State of Chhattisgarh, Through – Regional Transport Officer, Korba, Distt. Korba (CG)

Present:

Mr. Pankaj Shrivastava, learned counsel for the petitioner.

Mr. G.K. Beriwal, learned Dy. Advocate General for the State/respondent.

O R D E R

(Passed on 17th December 2007)

Dhirendra Mishra, J

Cr.M.P.No. 583/07, Cr.M.P.No. 584/07 and Cr.M.P.No. 585/07 preferred by the petitioner under Section 482 of the Code of Criminal Procedure are being disposed of by this common order as by these petitions the petitioner has questioned the legality, validity and correctness of the orders passed by learned Sessions Judge, Korba in criminal revision Nos. 53/07, 55/07 & 54/07 respectively whereby the revision petitions have been dismissed and orders of the Chief Judicial Magistrate, Korba rejecting his applications under Section 457 of the Cr.P.C. for interim custody of the vehicles seized under Section 207 of the Motor Vehicle Act, have been upheld.

2. The facts necessary for deciding the above petitions are that vehicles No.C.G.07-Z.B./1641, C.G.10-Z.B./1067 and C.G.04-Z.B./1440 were seized by the Road Transport Officer, Korba for the offence under Section 207 of the Motor Vehicle Act (for brevity 'the Act') on the ground that the same were being plied in violation of the permit conditions with wrong registration number and wrong chassis

number. After seizure, the above vehicles were given in the custody of the Police Station – Pali and investigation is going on.

3. The petitioner claiming himself to be the registered owner of the above vehicles applied for interim custody by filing separate applications under Section 457 of the Cr.P.C. before the Chief Judicial Magistrate, Korba. Learned C.J.M. rejected his applications observing that from perusal of the report of R.T.O. it appears that the vehicles were being plied in violation of the permit conditions, permanent permit granted to the petitioner has already been cancelled on 1st October 2007, the petitioner has been directed to return the original permit and has been further directed to stop plying the above vehicles and that the dealer of the vehicles Tata Motor Pvt. Ltd. after enquiry has reported that the chassis number of the vehicles is without original punch and regarding engine number it has been shown that it has either been removed or lost.

4. Learned counsel for the petitioner submitted that the vehicles were registered with the R.T.O. after physical verification. The permit has been cancelled and the vehicles are lying unattended in Police Station Pali. He further argued that the whole exercise has been commenced at the instance of rival bus operators and the Courts below without considering this aspect have mechanically rejected his applications under Section 457 of the Cr.P.C. for interim custody of the vehicles.

5. Placing reliance on the order passed in the matter of **Gopal Vishvas Vs. State of C.G.** reported in **2005(1) C.G.L.J. 112**, it has been contended that the seized vehicles should be given in the interim custody of the registered owner as they are exposed to heat, cold and rains as a result of which they are likely to junk causing irreparable damage and loss to the petitioner.

6. On the other hand, learned counsel for the State/respondent supported the orders passed by both the Courts below.

7. I have heard learned counsel for the respective parties and have gone through the orders of the Courts below.

8. From perusal of the impugned orders it is clear that permanent permit of the registered vehicles has been cancelled on 1st October 2007. There is a charge against the petitioner that chassis number and engine number of the vehicles do not bear the original punch and engine number is missing. The owner of the vehicles was plying the seized vehicles by putting wrong registration number of other vehicle and enquiry is pending.

9. Apart from the above reasons, it is also observed that the vehicles have been seized under Section 207 of the Act. Section 207 of the Act is being reproduced as under:

> *"**S.207. Power to detain vehicles used without certificate of registration permit, etc.** – (1) Any police officer or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention or any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:*
>
> *Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement in respect thereof.*
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> *(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person incharge of the motor vehicle may apply to the transport authority or any officer authorized in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.*

10. In the present case, the motor vehicles in question have been seized on the charge that the same were found plying without permit and with fake registration number. It is also alleged that the chassis

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number does not bear the original punch and engine number is missing. Section 66(1) of the Act reads as under:

> *"**S.66. Necessity for permits**.- (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used....."*

11. Therefore, the vehicle could not have been plied except on a permit granted or countersigned by the Transport Authority. The concept and constitution of the "Transport Authority" is envisaged under section 68 of the Act. Keeping in view this scheme, the parliament under sub-section (2) of Section 207 has provided that if a motor vehicle is, inter alia, seized and detained for violation of the provisions of Section 66(1) of the Act i.e. if it is found plying without the requisite permit, then the owner has to apply for release of the vehicle to the Transport Authority or any officers authorized in this behalf by the State Government together with the relevant documents for release of the vehicle. On having received the application for release, the said Authority or officer can release the vehicle subject to such conditions as they may deem fit to impose only after verification of relevant documents. In my considered opinion, if the vehicles seized on the ground that they were being plied without having any permit or by using registration number of the other vehicle, then verification of the allegations would be necessary before order of release is passed under sub-section 2 of Section 207 of the Act. The object behind the enactment of such a stringent provision is quite apparent. The vehicle cannot be permitted to be used except under and in accordance with the permit granted by the Transport Authorities under the provisions of the Act. If the vehicles are released without there being any permit in favour of the petitioner, then there are always chances of its misuse in the sense that it can be plied again in violation of the provisions of the Act.

12. The petitioner applied for interim custody of the vehicles under Section 457 of the Cr.P.C. before the C.J.M. Korba. In my considered

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opinion the learned C.J.M. cannot exercise jurisdiction under Section 457 of the Cr.P.C. by granting interim custody of the vehicles which have been seized under Section 207 of the Act because with regard to seizure of or release of motor vehicle specific provisions have been made under the special act. In this connection, reference may be made to section 4 of the Cr.P.C. which reads as under:

> *"S.4 Trial of offences under the Indian Penal Code and other laws – (1) All offences under the Indian Penal Code (45 of 1860), shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.*
> *(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.*

13. Since power of releasing the motor vehicle seized under the Act has been conferred on specified authorities, therefore, impliedly in this regard the power of the Magistrate, being a court of general jurisdiction, stands excluded.

14. So far as arguments advanced by learned counsel for the petitioner based on the order passed in the matter of *Gopal Vishvas* (supra) that if the vehicles in question are allowed to remain in police custody under open sky and unattended, it may get damaged to an irreparable extent, is concerned, it may be observed that the concerned authorities will pass appropriate orders for safe custody of the vehicles and in case the owner applies for release of the vehicles before the concerned Transport Authorities or officer under sub-section (2) of Section 207 of the Act, the same shall be expeditiously disposed of in accordance with law.

15. With the aforesaid observations, all the three petitions stand dismissed.

Sd/-
Dhirendra Mishra
Judge